IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9422 OF 2003

Bajarang Anna Salunkhe ... Petitioner

V/s

Chief Executive Officer,
Zilla Parishad, Sangli. ... Respondent

Mr. Kuldeep S. Patil for the petitioner.

Mr. Mandar Goswami for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 16TH JANUARY, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. By this petition, the petitioner worker has challenged the order passed by the Member, Industrial Court, dismissing his complaint under Sec. 28(i) read with Item Nos. 5, 9 & 10 of Schedule IV of the MRTU & PULP Act, 1971.

3. The Regional Water Supply Scheme of Village Nandre - Vasagade situated within Tasgaon Taluka, Dist. Sangli,

was maintained by Sangli Sub-Division of Environmental Engineering Works, Department of Government of Maharashtra. It was handed over to the respondent Zilla Parishad, Sangli, w.e.f. 1.4.1994. Eventually, all workmen working under the Water Supply Scheme were transferred on the establishment of respondent Zilla Parishad.

4. It is the case of the complainant that he was appointed as a Mazdoor on 1.7.1981 and worked under the Scheme since then. According to him, the respondent promoted him on the post of plumber/fitter from 4.7.1984 and worked as fitter since then. He was orally terminated on 29.10.1986. Then he filed the complaint of unfair labour practice being Complaint (ULP) No. 242 of 1986 before the Labour Court, Sangli, wherein ex-parte order was made to reinstate him. The respondent got annoyed and reverted him illegbaly by order dated 20.5.1988.

It is alleged that his reversion is without enquiry and in violation of the Standing Orders and hence unsustainable in law. Therefore he approached the Zilla Parishad who assured that withdrawal of the reversion order will confirm him in service.

5. Later on, the complainant was confirmed by order dated 20.9.1991 on the post of Mazdoor and not on the post of Fitter. It is alleged that the reversion without enquiry is illegal and he was compelled to work as Mazdoor. The other workmen are confirmed on the posts on which they were working and hence it is alleged that the Zilla Parishad has engaged in unfair labour practices under Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act.

6. It is further submitted that the complainant received confirmation order on the post of Mazdoor on 9.10.1991 and the complaint is filed on 8.1.1992 which is within limitation. Therefore, the complainant sought declaration of unfair labour practices setting aside the reversion orders dated 20.5.1988 and 20.9.1991 and direction to confirm him on the post of Fitter w.e.f. 20.5.1988.

7. The respondent Zilla Parishad contested the claim contending that the complainant was serving as Mazdoor when the scheme was handed over and then brought on Converted Regular Temporary Establishment as Mazdoor from 1.4.1989 vide order dated 20.9.1991. Complainant

did not work as Fitter nor was competent to work as Fitter. Eventually, he was properly confirmed on the post of Mazdoor.

8. At the outset, it may be noted that the lower Court has dismissed the allegation regarding favouritism or partiality to one set of workers for want of any evidence. It is also held that it was for the complainant to prove that he was promoted on the post of plumber/fitter and since there is no evidence in this regard, the complaint deserves to be dismissed on all counts.

9. The learned counsel for the petitioner brought to my notice the written statement filed by the respondent wherein it was stated that worker on daily wages could be demoted either orally or by written notice and the complainant was given oral as well as written notice of the demotion and, as such, he has no right over the post of fitter.

10. The learned counsel for the petitioner also failed to satisfy this Court that the complainant was made permanent on the post of fitter and, therefore, his reversion to the post of Mazdoor without enquiry was

illegal. It was further submitted that the matter should be remanded in order to determine the illegality of reversion. However, in my considered view, there is no merit in the complaint even for remand as there is absolutely no evidence from the complainant petitioner to show that he had any vested right in the post of fitter nor there is any evidence to show that he was permanent in that post and, therefore, could not be reverted to the post of Mazdoor without any enquiry as per the rules.

11. Be that as it may. The fact remains that the complainant has failed to establish his vested right over the post of fitter in the establishment of the respondent. On the other hand, the action of the respondent appears to be within four corners of the law and, therefore, the petition is devoid of any merits and thus stands dismissed with no order as to costs.

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